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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/049,319	02/05/2002	Alan F. Savicki	492.216	3711

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EXAMINER

BRITTAIN, JAMES R

ART UNIT	PAPER NUMBER
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3677

DATE MAILED: 12/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/049,319

Applicant(s)

SAVICKI, ALAN F.

Examiner

James R. Brittain

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 September 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☒ Claim(s) 3-8 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION***Claim Objections***

Claims 3-8 are objected to because of the following informalities: The term "the first flange portion" in each claim lacks clear antecedent basis since it can refer to either the "upper" or "altered" flange of claim 1. Claim 1 clearly recites "a first upper flange portion" (line 11) and "a first altered flange portion" (lines 14-15). The term "the first flange portion" (claim 3, line 2; claim 4, line 2; claim 5, line 2; claim 6, line 2; claim 7, line 2; claim 8, line 1) does not discriminate between "a first upper flange portion" and "a first altered flange portion" and therefore lacks clear antecedent basis. Appropriate correction is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-10, 13, 14, 16 and 17 are rejected under 35 U.S.C. §103(a) as being unpatentable over Stolmeier et al. (US 5871281) in view of Herrington et al. (US 5020194).

Stolmeier et al. (US 5871281) (Figures 3-7) teach closure device, comprising: first and second interlocking fastening strips arranged to be interlocked over a predetermined X axis between first and second ends by arrowhead profile elements, the fastening strips being secured together at the first and second ends; a slider 21 shown in figures 6 and 7 as slidably disposed on the fastening strips for movement between the first and second ends, the slider facilitating occlusion of the fastening strips when moved towards the first end, the slider including a

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separator 34 between sidewalls for facilitating the deocclusion of the fastening strips when the slider is moved towards the second end; and the first and second fastening strips include first flange and second flange portions which extend inwardly toward the opposite fastening strip; and first and second altered flange portions defined by the notches 37, 38 near the ends of the first and second fastening strips that receive the separator 34. Stolmeier et al. (US 5871281) also disclose that the tab can be molded or separately attached such as to project downward into the notch or even into the space between the complementary rib and groove 18P and 19G as shown in figures 6 and 7 (col. 4, lines 38-42). The notch exists in the second length of the first upper flange and while the notch also exists in the first length of the first upper flange the claim language does not preclude it. The difference is that the first upper flange is required to be of constant length along the longitudinal x axis over the fastening strip while the upper flanges of the device of Stolmeier et al. has substantially all of the material of the upper flanges above the closure elements removed so that it terminates before the end of the fastening strips. However, Herrington et al. (figure 6) shows an altered flange structure wherein there is still substantial flange material between the slits 15a, 16a and the closure elements 17, 18 and such structure inherently provides protection to the closure elements while still removing the inward extending portion from operative functioning.

Applicant is reminded that “[I]n considering the disclosure of a reference, it is proper to take into account not only specific teachings of the reference but also the inferences which one skilled in the art would reasonably be expected to draw therefrom.” *In re Preda*, 401 F.2d 825, 826, 159 USPQ 342, 344 (CCPA 1968).

As it would be beneficial to the fastener of Stolmeier et al. to have protection of the closure elements, it would have been obvious to extend the upper flange of the fastener of Stolmeier et al. to be substantially above the closure elements as taught by Herrington et al. to provide protection to the closure elements. As to claims 5-8 and 10, the method steps of "flattening" and "removing" don't create a finished article of a different structure than that taught by the teachings of Stolmeier et al. (US 5871281) combined with Herrington et al. (US 5020194) and the device of Stolmeier et al. (US 5871281) is fully capable of having the final product structure created by a flattening or removal of material. Applicant has shown no characteristic from these processes that would create a different product from that taught by Stolmeier et al. (US 5871281).

Claims 11 and 12 are rejected under 35 U.S.C. §103(a) as being unpatentable over Stolmeier et al. (US 5871281) in view of Herrington et al. (US 5020194) as applied to claims 1 and 9 above, and further in view of Porchia et al. (US 5664299).

Further modification of the closure of Stolmeier et al. such that the closure elements are both U-channel elements would have been obvious in view of Porchia et al. (figures 1, 2) teaching that it is conventional to utilize interengaging U-channel elements 16, 17 so as to better secure the fastening strips together.

Claim 15 is rejected under 35 U.S.C. §103(a) as being unpatentable over Stolmeier et al. (US 5871281) in view of Herrington et al. (US 5020194) as applied to claims 1 and 9 above, and further in view of Herrington (US 5007143).

Further modification of the closure of Stolmeier et al. such that the closure elements are rolling action type fastening elements would have been obvious in view of Herrington (figures 4-

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7) teaching that it is conventional to utilize rolling action type fastener elements 16, 17 so as to better secure the fastening strips together.

Response to Arguments

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Applicant's amendment indicates the first length is has a measure constant along the X-axis and this language is broad as worded and does not preclude the application of Herrington et al. (US 5020194) because the orientation of the "constant length" is unstated as to whether it can be of "constant length" in the direction of the X-axis.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

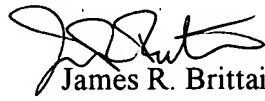
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Any inquiry concerning this communication or earlier communications from the examiner should be directed to James R. Brittain whose telephone number is (703) 308-2222.

The examiner can normally be reached on M-F 5:30-2:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J. Swann can be reached on (703) 306-4115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


James R. Brittain
Primary Examiner
Art Unit 3677

JRB